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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,455	12/26/2001	Takayoshi Oyamada	0649-0814P	2939
2292	7590	03/01/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			CHEA, THORL	
			ART UNIT	PAPER NUMBER
			1752	
DATE MAILED: 03/01/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/025,455

Applicant(s)

OYAMADA ET AL.

Examiner

Thorl Chea

Art Unit

1752

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 09 February 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

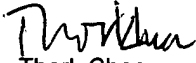
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1 and 6-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


Thorl Chea
Primary Examiner
Art Unit: 1752

Continuation of 11. does NOT place the application in condition for allowance because: for the reason set forth in the final office action. The non-photosensitive organic silver salt requires: 1) substantially no silver stearate; 2) a length/width ratio of 1-9; 3) an aspect ratio 1.1 to 30; 4) an equivalent -sphere diameter of 0.05 to 1. micron; 5) content of silver behenate that is 90 to 100 % per mole of of the non-photosensitive organic silver salt and 6) a content of silver arachidate that is 3 mole % or less of the non-photosensitive organic silver salt. In a case wherein the silver stearate and the silver arachidate do not contains in the grains and the silver behenate is 97 mole %, the other type of the silver salt of an fatty acid or the other component may include therein. The applicants'argument appears to argue that the content of the non-photosensitive organic silver salt grain is limited to the silver stearate, silver arachidate and silver behenate. However, the scope of the claims are not to the three component of the silver stearate, silver arachidate and silver behenate. The size of the grains are not critical since it is taught in EP'812 and the EP'812 in [0221] discloses the use only the behenic acid in the preparation of silver behenate and it is assumed that the behenic acid contains no other fatty acid such as stearic acid or arachidic acid. The presented in the argument that " behenic acid " provide in the Internet catalogue of Thornley Company, submitted on July 13, 2004 and October 31, 2003 is not a product used in EP'812. The fatty acid used in EP'812 is manufactured by "Henckel Co" and used in the personal care product, rather than "Thornley Company" presented in the argument. Moreover, this document has little probative value since the applicants fails to declare that this the behenic acid presented in the document represents the behenic acid acid used in EP'812. Moreover, the document presented in the argument does not use the term "benenic acid", but by tradename such as Hystrene associated by number , not benenic acid (trade name:edenor C-22-85). Supposedly, the benenic acid use in the EP'812 has composition outside the scope of the claimed invention. This is not necessarily mean, that the worker the invention as claimed would not have been found unobvious to the worker of ordinary skill in the art. The prior art of record such as Hayashi et al can produce silver salt of an organic acid having silver behenate content up to 98.1 % (column 6, Example 1), and it found that the silver behenate provide a photothermographic material with less fog than the silver stearate (column 7, lines 45-55). The silver behenate provide photothermographic material with fogging density 0.08 while the silver stearate provide photothermographic material with fog density 0.10. Therefore, the worker of ordinary skill in the art would have expected the silver behenate provide a better results. The behenic acid contains 22 carbon atom while the stearic acid contains 18 c and arachidic acid 20 C. The worker of ordinary skill in the art would have expected that the silver stearate and silver arachidate would provide a negative effect to the photothermographic material because they contain low number of carbon. The argument with respect to the unexpected results is not well-taken. The scope of silver behenate is from 97 mole % to 100 mole %, while declaration discloses the use of 98 mole % silver behenate. Moreover, the scope of the grain size showing in the Declaration is not commensurate with the scope of the grain size required by the claimed invention. There is nowhere in the specification and the Declaration showing that 100 mole % of silver behenate in the silver salt of an organic acid can be produced. The applicants are referred to the results shown in the specification in Table 1 wherein the silver salt dispersion B, C contains silver behenate and silver arachidate outside the scope of the claimed invention, but provide good results similar to that presented in the claimed invention. See Table 2. The worker of ordinary skill in the art would have understood that silver behenate one of the indispensable component of dry silver such as taught in Matsumoto et al in column 17, lines 10-15 in term of whiteness, light stability, having excellent moisture resistance, and easily to be used in combination with a reducing agent having a relatively weak reducing ability. Accordingly, it is still believed that the invention as claimed would have been prima facie obvious to the worker of ordinary skill in the art at the time the invention was made .